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## SELECTED PRACTICAL ISSUES RELATED TO CRIMINAL LIABILITY FOR WASTE STORAGE (INTERNATIONAL, EU AND POLISH PERSPECTIVES)

Wybrane zagadnienia praktyczne związane z odpowiedzialnością karną za  
składowanie odpadów (perspektywa międzynarodowa, unijna oraz krajowa)

### Abstract

This paper examines the legal regulations concerning criminal liability for waste disposal. These issues are discussed against the backdrop of EU and international regulations governing the requirements that waste management entities must meet. Subsequently, the study outlines the key penal provisions of the Polish Penal Code regarding liability for offences against proper waste management. In this context, and with reference to non-domestic regulations, the paper presents positions regarding the interpretation of the elements constituting the prohibited acts described in the Polish Penal Code and in statutes outside the Code. This approach aims to address the question of whether it is necessary to refer to EU and international regulations when interpreting the elements of prohibited acts, in order to determine the extent of consistency between these different legal frameworks.

**Keywords:** environment, waste, illegal disposal sites, human life, health, hazardous waste, natural environment.

### Abstrakt

Przedmiotem rozważań stały się zagadnienia dotyczące uregulowań prawnych odnoszących się do odpowiedzialności karnej za składowanie odpadów. Wskazane zagadnienia zostały omówione na płaszczyźnie przepisów unijnych oraz międzynarodowych regulujących wymagania jakie powinny spełniać podmioty zajmujące się gospodarką odpadami. W dalszej kolejności przedstawione zostały podstawowe przepisy karne z polskiego kodeksu karnego dotyczące odpowiedzialności za przestępstwa skierowane przeciwko prawidłowej gospodarce odpadami. W tym obszarze przedstawione zostały w kontekście uregulowań pozakrajowych stanowiska odnoszące się do wykładni znamion zawartych w czynach zabronionych, które zostały opisane w polskim kodeksie karnym oraz ustawach pozakodeksowych. Zabieg ten miał odpowiedzieć na pytanie o konieczność odwoływania się przy wykładni znamion czynów

zabronionych w przepisach unijnych oraz międzynarodowych w celu wykazania czy obie płaszczyzny są ze sobą spójne.

**Słowa kluczowe:** środowisko, odpady, nielegalne składowiska, życie człowieka, zdrowie, odpady niebezpieczne, środowisko naturalne

## 1. Introduction

The issue of protecting the environment from waste, including hazardous waste in particular, and its storage in places not designated for this purpose, is of significant importance from the point of view of protecting human life and health.<sup>1</sup> Every country in the world struggles with waste generated during the manufacturing process, which is then illegally dumped. It can be said that rubbish surrounds us on all sides, and what is more, we are producing more and more of it, and the problem of its disposal will only grow. The fight against illegal waste disposal sites is important not only from the point of view of environmental protection, but also for the life and health of the people who live in this environment.

Illegal waste storage sites are not only a Polish problem, but also a cross-border and international one. Suffice it to say that the largest producer of waste is the United States, which is unable to dispose of the waste it generates and, until recently, sold it to China and now sells it to African countries which do not have the means to dispose of it. Another problem is Russia and the vast areas of the country that have been turned into toxic ecological bombs, especially in Siberia, after decommissioned uranium mines, where there are places inaccessible to humans due to radiation and toxic fumes. Another problem is India, which is considered one of the most polluted countries in the world, and where recycling is almost non-existent, which, with the rise of consumerism, means huge piles of waste that produce enormous amounts of hazardous substances that enter the air, soil and water. In many countries, waste incineration is a form of recycling. This phenomenon is also intensifying in Poland.

Many countries attempt to dispose of waste through various entities that engage in the illegal transport of waste and its subsequent storage in locations not designated for this purpose. That is why it is so important to have an international perspective on legal regulations, indicating the basic regulations in this area, followed by EU regulations and, finally, national regulations. The purpose of compiling these regulations is to determine whether they, as a whole, consistently limit illegal waste disposal and whether there are any loopholes in the regulations that could be exploited by international criminal groups. The aim of this article is also to show the possibilities of using supranational regulations to interpret national law in order to better combat the phenomenon of illegal waste disposal sites.

## 2. International perspective

The issue of waste is regulated by international law, with the most important instrument being the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other

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<sup>1</sup> E. Zębek, *Zasady gospodarki odpadami w ujęciu prawnym i środowiskowym*, Olsztyn 2018, p. 1.

Matter, drawn up in Moscow, Washington, London and Mexico on 29 December 1972<sup>2</sup>, known as the ‘Dumping Convention’). This Convention regulates the issue of reducing marine pollution caused by the dumping of waste or other substances from ships, aircraft, platforms or other devices located at sea, as well as any deliberate sinking of ships, aircraft, platforms or other devices located at sea. Pursuant to Article IV of the Convention, the dumping of waste and other substances was subject to either a total ban or the possibility of dumping, but only after obtaining a permit, depending on the annex in which the waste was listed. It should be noted that the Convention did not contain a definition of ‘waste’, but Article III(4) included the term ‘*wastes or other matter*’, which meant ‘*material and substance of any kind, form or description*’. In addition, Annex III contained a list of groups of substances which, depending on their type, were subject to exclusion or certain restrictions on disposal. On 23 January 1983, a declaration was issued on Poland's accession to this Convention<sup>3</sup>. Subsequently, on 26 March 1977, a government statement was issued on the entry into force of amendments to the annexes<sup>4</sup>. The convention did not contain any criminal provisions, but after its ratification and publication in the Journal of Laws, it became binding law<sup>5</sup>.

After ratifying the above-mentioned convention, Poland was obliged to implement it, which was done in the Act of 16 March 1995 on the prevention of sea pollution by ships<sup>6</sup>, where the Polish legislature regulated the issue of waste disposal.

The second important legal act is the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, signed in Basel on 22 March 1989<sup>7</sup>, known as the ‘Basel Convention’. This convention was intended to limit the storage of waste at the lowest cost in developing countries<sup>8</sup>. Article 2(1) of the Convention contains a definition of the term ‘wastes’, which is understood to mean ‘*substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law*’. At the same time, the States that were parties to the Convention undertook to classify wastes other than those listed in the annexes to the Convention as hazardous wastes within six

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<sup>2</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, drawn up in Moscow, Washington, London and Mexico on 29 December 1972, ratified by Poland: Journal of Laws of 1984, No. 11, item 46.

<sup>3</sup> Government Statement of 23 January 1983 on the accession of the Polish People's Republic to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, drawn up in Moscow, Washington, London and Mexico on 29 December 1972. (Journal of Laws of 1984, No. 11, item 47).

<sup>4</sup> Government statement on the entry into force of amendments to Annexes I, II and III to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, drawn up in Moscow, Washington, London and Mexico on 29 December 1972, and the publication of the updated consolidated texts of these annexes of 26 March 1997 (Journal of Laws No. 47, item 300, as amended).

<sup>5</sup> In Journal of Laws No. 11 of 1984, item 46, the Council of State declared accession to the Convention.

<sup>6</sup> Act of 16 March 1995 on the prevention of marine pollution by ships – Journal of Laws of 2020, item 1955).

<sup>7</sup> Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, signed in Basel on 22 March 1989, ratified by Poland, Journal of Laws of 1995, No. 19, item 88.

<sup>8</sup> M. M. Kenig-Witkowska, *Rozwój międzynarodowego prawa środowiska* [in:] *Międzynarodowe prawo środowiska. Wybrane zagadnienia systemowe*, ed. M. M. Kenig-Witkowska, Warszawa 2011, p. 18.

months of becoming parties to the Convention. The Convention was amended twice, first on 22 September 1995<sup>9</sup>, and then, for the second time, between 1998 and 2013<sup>10</sup>.

On 30 June 1994, Poland submitted a declaration on the ratification of the Convention<sup>11</sup>.

In addition, the issue of waste has been the subject of numerous regional agreements, such as the Bamako Convention, adopted on 29 January 1991 by African countries under the auspices of the Organisation of African Unity<sup>12</sup>. This Convention regulated issues concerning the ban on imports to Africa, as well as the possibility of conducting cross-border inspections of hazardous waste which was transported to Africa<sup>13</sup>. The need to incorporate the provisions of the Basel Convention into Polish law was fulfilled by the Act of 29 June 2007 on the international transport of waste<sup>14</sup>, which will be discussed further below.

### 3. EU perspective

Moving on to European regulations, it should first be noted that virtually all EU countries have a problem with waste management.

The European Union, taken as a whole, has one of the richest economies in the world and has long been investing heavily in proper environmental regulations and waste management. The European Union is introducing increasingly stringent measures aimed at creating a cleaner and healthier environment. The changes are difficult to implement due to the continent's considerable biodiversity, but the basic tasks of reducing waste production and managing it more effectively are being carried out. Implementing changes is also difficult because many people believe that the European Union, on the one hand, is spending too much on ecology and, on the other hand, is moving too radically away from fossil fuels, which is significantly lowering the standard of living of European citizens. Furthermore, there is a view that, given Europe's small share of the global environment, amounting to only a little over 10 per cent, this effort will not improve the lives of its inhabitants in relation to the excessive expenditure. Fortunately, such ignorance and short-sighted thinking is being replaced by an approach according to which difficult and expensive solutions will become widespread and cheaper over time, and their application will have a positive impact on the environment in which people live.

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<sup>9</sup> Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, drawn up in Basel on 22 March 1989, adopted in accordance with Decision III/1 of the Conference of the Parties to the Convention in Geneva on 22 September 1995 (Journal of Laws of 2020, item 1482).

<sup>10</sup> Amendments to the annexes to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, drawn up in Basel on 22 March 1989, adopted in Kuching on 23-27 February 1998 and in Geneva on 9-13 December 2002, 25-29 October 2004 and 28 April-10 May 2013 (Journal of Laws of 2022, item 173), as well as the Government Statement of 2 November 2021 on the binding force of amendments to the annexes to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, drawn up in Basel on 22 March 1989, adopted in Kuching on 23-27 February 1998 and in Geneva on 9-13 December 2002, 25-29 October 2004 and 28 April - 10 May 2013 (Journal of Laws of 2022, item 174).

<sup>11</sup> Government Statement of 30 June 1994 on the ratification by the Republic of Poland of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, drawn up in Basel on 22 March 1989 (Journal of Laws of 1995, No. 19, item 89).

<sup>12</sup> M. M. Kenig-Witkowska, *Transgraniczne przemieszczanie niebezpiecznych...*, op. cit., p. 258.

<sup>13</sup> Judgment of the Court of Justice of 23 October 2025, C-221/24 and C-222/24, *Naturvårdsverket v Uq and Ic.*, LEX No 3932148, concerning the shipment of waste in the form of tyres, electronic products, furniture, clothing and household appliances from Sweden via Belgium to Cameroon and from Germany to Congo.

<sup>14</sup> Act of 29 June 2007 on the international transport of waste – Journal of Laws of 2020, item 1792.

This approach is also based on the valid assumption that the world around us is one large ecosystem that belongs to all of us, but is also dependent on all of us. That is why it is so important to introduce legal regulations at Community level and to enforce their implementation by all members of the Community.

Finally, it should be noted that a historical approach to discussing regulations relating to production restrictions and proper waste management will allow us to show the European Union's approach to this issue and how it has changed over time. This is also important from the point of view of interpreting the applicable law, because changes in the current law reveal the direction in which the legislature is heading.

Turning to EU regulations, it should first be noted that the first documents concerning waste management in the European Union appeared as early as 1975, when Directive 74/442/EEC was introduced, defining the Community's strategy on waste<sup>15</sup>. Another important piece of legislation is Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste<sup>16</sup>. It was a legal act that regulated primarily the concept of 'waste', which, according to Article 1, was defined as *'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'*. In connection with this concept and the need to determine when waste has been 'disposed of', it is worth quoting the position of the Court of Justice of the European Union when assessing whether a substance or object has been 'disposed of'. The Court indicates in its rulings that it is important to determine the reasons for applying this changed method of use and the intentions that prompted the holder to make this change (e.g. unsuitability or inability to use in the previous manner), as well as the possible consequences of this new method of use<sup>17</sup>.

The Council Directive of 12 December 1991 on hazardous waste<sup>18</sup>, which was replaced by Council Directive 94/31/EC of 27 June 1994 amending Directive 91/689/EEC on hazardous waste, was important from the point of view of hazardous waste<sup>19</sup>.

The issue of packaging has also been regulated, on the basis of Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste<sup>20</sup>.

In addition, the issue of waste storage is also regulated by Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste<sup>21</sup>.

Another legal act regulating waste was Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste<sup>22</sup>. It replaced the previously mentioned

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<sup>15</sup> Council Directive 74/442/EEC of 15 July 1975 on waste (Framework Directive), currently not in force.

<sup>16</sup> Council Directive of 18 March 1991 amending Directive 75/442/EEC on waste (OJ EU L 78, 1991), p. 32.

<sup>17</sup> Judgment of the Court of Justice of the European Union of 15 June 2000 in joined cases C-418/97 and C-419/97, judgment of the Court of Justice of the European Union of 11 September 2003 in case C-114/01.

<sup>18</sup> Council Directive of 12 December 1991 on hazardous waste (OJ EU L 377, 1991, p. 20, as amended).

<sup>19</sup> Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ EU L 377), 1991, p. 20, as amended).

<sup>20</sup> Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ EU L 365, 1994), p. 10, as amended.

<sup>21</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ EU L 182, 1999, p. 1, as amended).

<sup>22</sup> Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ EU L 114 of 27.04.2006, p. 9).

Directive 75/442/EEC<sup>23</sup>. Article 1 of this directive provides a definition of waste, which is understood to mean *'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'*. This legal act emphasises the act of discarding a substance or object. In addition, waste is classified in individual annexes, but this classification is open-ended<sup>24</sup>. This open-ended nature is evidenced by the general definition of waste in the individual annexes.

In its judgment of 18 December 2007 in Case C-194/05, the European Court of Justice stated that the classification of a substance or object as waste within the meaning of Article 1(a) of Directive 75/442 on waste, as amended by Directive 91/156, depends primarily on the behaviour of the holder and on the meaning of the term 'discard'<sup>25</sup>. These concepts must be interpreted not only in the light of the objective of the Directive, which, according to recital 3, is to protect human health and the environment from the harmful effects caused by the collection, transport, disposal, storage and landfill of waste, but also in the light of Article 174(2), which states that Community policy on the environment aims at a high level of protection and is based on the precautionary principle and the principles of preventive action. It follows that these concepts, and consequently the concept of 'waste', cannot be interpreted in a restrictive manner. The fact that a substance is indeed 'waste' within the meaning of Article 1(a) of Directive 75/442 on waste, as amended by Directive 91/156, must be confirmed in the light of all the circumstances, taking into account the objective of that directive and its effectiveness, which cannot be called into question. Certain circumstances may therefore indicate the existence of an act of *'disposal'*, an intention to *'discard'* or an obligation to *'discard'* a substance or object within the meaning of that provision. Since Directive 75/442 on waste does not propose any criterion for revealing the holder's intention to dispose of substances or objects, Member States, in the absence of Community rules, are free to choose the means of proving the circumstances defined in the directives they transpose, provided that this does not undermine the effectiveness of Community law. Member States may therefore, for example, define different categories of waste, in particular in order to facilitate the organisation and control of waste management, provided that the obligations arising from the Directive or other Community legislation on waste are complied with, and categories that may be excluded from the scope of the acts transposing the obligations arising from the directive are excluded in accordance with Article 2(1) thereof. In a subsequent ruling of 25 June 1997, the Court of Justice of the European Union held that *'substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists'*, even if they undergo deactivation processes to eliminate potential risks<sup>26</sup>.

Another legal act was the new Framework Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain

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<sup>23</sup> A. Kosieradzka-Federczyk, *Priorytety Unii Europejskiej w gospodarowaniu odpadami*, „Współczesne Problemy Zarządzania” 2013, No. 1, p. 48.

<sup>24</sup> Opinion of Advocate General Niilo Jääskinen of 18 June 2013 in joined cases C-241/12 and C-242/12, *Shell Nederland Verkoopmaatschappij BV and Belgian Shell*, <http://eur-lex>.

<sup>25</sup> Judgment of the European Court of Justice of 18 December 2007 in Case C-194/05.

<sup>26</sup> Judgment of the Court of Justice of the European Union of 25 June 1997 in joined cases C-304/94, C-330/94, C-342/94, C-224/95.

Directives<sup>27</sup>. This Directive entered into force on 12 December 2008<sup>28</sup>. This Directive established a legal framework for waste management in the Community<sup>29</sup> and defined key concepts, including in Article 3(1) of the Directive the concept of ‘waste’, which was understood to mean any substance or object which the holder discards, intends to discard or is required to discard. This definition was implemented in Article 3(1)(6) of the Polish Act of 14 December 2012 on Waste<sup>30</sup>. This definition provided the basis for recognising that, for example, an end-of-life vehicle should be considered hazardous waste, which was also linked to the interpretation of the term ‘disposal’ by the Supreme Administrative Court in its judgment of 12 March 2013, ref. no. II OSK 2132/ 11<sup>31</sup>, which will be discussed in detail later in this article. Returning, however, to the issue of the Directive of 19 November 2008, it should be noted that its main objective was to reduce the negative effects of waste generation and management on human health and the environment. Therefore, not every object or substance that is suitable for further economic use can be considered waste<sup>32</sup>. The Directive emphasises proper waste management and the promotion of waste recovery and recycling techniques.

It was significant that the directive introduced a hierarchy of waste management, which includes:

1. preventing the generation of waste,
2. preparing waste for reuse,
3. recycling,
4. other recovery methods, e.g. energy recovery,
5. neutralising.

The directive also introduced the ‘polluter pays’ principle, according to which the costs of waste management are borne by the original producer. In addition, the concept of ‘extended producer responsibility’ was introduced, according to which producers are responsible for their products even after they have been used.

In addition, waste management must be carried out in a manner that does not pose a threat to water, air, soil, plants or animals, and does not cause nuisances such as noise or unpleasant odours.

Waste producers or possessors are required to process waste or commission this task to recognised operators with appropriate permits and which are subject to regular inspections. As part of a circular economy package, Directive (EU) 2018/851 amended Directive 2008/98/EC by tightening the provisions on waste prevention and promoting sustainable manufacturing and consumption patterns. The new provisions also introduced an obligation to separately collect textiles, hazardous waste and bio-waste.

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<sup>27</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ EU L 312, p. 3, as amended).

<sup>28</sup> M. Stachowicz, *Dyrektywy unijne dotyczące gospodarki odpadami komunalnymi*, „Prace Naukowe Uniwersytetu Ekonomicznego We Wrocławiu” 2011, vol. 152, p. 504.

<sup>29</sup> K., Karpus, *Gospodarowanie odpadami w świetle orzecznictwa Trybunału Sprawiedliwości Unii Europejskiej na gruncie dyrektyw ramowych w sprawie odpadów*, Włocławek 2011, p. 8, writes that this Directive represented a ‘new beginning’ from the point of view of EU waste law.

<sup>30</sup> Act of 14 December 2012 on Waste (Journal of Laws of 2016, item 1987, as amended).

<sup>31</sup> Judgment of the Supreme Administrative Court of 12 March 2013, ref. no. II OSK 2132/11.

<sup>32</sup> Judgment of the CJEU of 15 January 2004 in Case C-235/02.

The directive also establishes new recycling targets for municipal waste, setting them at:

- a minimum of 55% by 2025,
- 60% by 2030,
- 65% by 2035.

Member States have committed to taking measures to promote sustainable development and reduce marine litter, as well as to promote the recovery of critical raw materials.

This directive was to be implemented in Member States by December 2010, which Poland failed to do, resulting in a request to the Court of Justice of the European Union to impose a financial penalty on Poland in the amount of EUR 67,000 per day<sup>33</sup>. It was only this request for a penalty that accelerated work on the new Act on Waste, which was implemented in stages, as a new municipal waste management system was first introduced on 1 July 2011, while at the same time amending the Act of 27 April 2001 on Waste to take into account future solutions. Then, on 14 December 2012, a new Act on Waste<sup>34</sup>, was passed, which entered into force on 23 January 2013, opening a new stage in waste management in Poland.

In waste management, the issue of waste shipment is equally important, especially when it involves several countries. Therefore, on 14 June 2006, Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006<sup>35</sup> on shipments of waste<sup>36</sup>. This Regulation, like any EU regulation, is directly applicable in all Member States of the European Union, which are required to establish appropriate systems for the supervision and control of waste shipments. In accordance with Regulation No 1013/2006, a number of procedures apply within the EU. The following procedures are considered to be basic: the procedure of so-called general information obligations, the procedure of so-called prior written notification and consent, and the procedure of so-called intra-EU shipments with transit through third countries<sup>37</sup>. In accordance with the provisions of Article 30(1) and Article 50 of the Regulation, these countries had to introduce effective, proportionate and dissuasive penalties for infringements and carry out inspections and spot checks related to waste shipments. This required cooperation between individual countries to prevent and detect illegal shipments of waste and, consequently, illegal waste disposal sites. Regulations on international waste shipments are also based on international legal instruments such as the Basel Convention<sup>38</sup> regulating the control of transboundary movements of hazardous waste and its disposal, and OECD decisions on the inspections of shipments of waste intended for recovery. The Convention contains numerous definitions that establish the meaning of basic concepts such as ‘waste’, ‘management’, ‘transboundary movement’, ‘disposal’ and others, which are intended

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<sup>33</sup> D. Danecka, “O pojęciu odpadów w rozumieniu ustawy z dnia 14 grudnia 2012 roku”, „Ius Novum” 2016, No. 4, p. 297.

<sup>34</sup> Act on Waste of 14 December 2012 – Journal of Laws of 2013, item 21, as amended.

<sup>35</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ EC L 190 of 12.07.2006, as amended).

<sup>36</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ EU L 190, p. 1).

<sup>37</sup> E. Zębek, *Międzynarodowe przemieszczanie odpadów pomiędzy krajami unii europejskiej - aspekt prawnokarny*, „Przegląd Policyjny” 2020, vol. 137, no. 1, p. 67.

<sup>38</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, drawn up in Basel on 22 March 1989 (Journal of Laws of 1995, No. 19, item 88, as amended).

to help determine in specific cases whether we are dealing with behaviour which does not comply with the requirements laid down in the above-mentioned legal acts.

As regards Polish regulations, it is worth noting that the Act on International Waste Shipments of 29 June 2007 (Journal of Laws No. 124, item 859)<sup>39</sup>, which transposed the above-mentioned regulation into the Polish legal system entered into force on 12 July 2007.

From the point of view of criminal liability for environmental offences, Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law is of particular importance<sup>40</sup>. From a waste management perspective, it is of fundamental importance because Articles 3b and 3c impose an obligation on Member States to ensure that acts committed unlawfully and intentionally or as a result of at least gross negligence constitute offences in national legislation. This concerns acts involving activities such as the collection, transport, recovery or neutralisation of waste, including the supervision of such activities and the subsequent treatment of waste disposal sites, along with subsequent activities as a dealer or broker (waste management), which cause or are likely to cause death or serious injury to persons or serious damage to the quality of air, soil or water, or to animals or plants. This also includes the shipment of waste, if this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste and is carried out in significant quantities, whether in a single shipment or in several shipments which prove to be linked. The provision contained in Article 5 of the Directive is also important, as it states that acts described as offences will be '*punishable by effective, proportionate and dissuasive criminal penalties*'.

It is undisputed that the extension of liability is significantly influenced by the provisions of Article 6 and Article 7 of the Directive, which stipulate that Member States shall ensure that legal persons can be held criminally liable for offences committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person. The problem is that under Polish law, economic activity may be conducted not only by legal persons, but it should be remembered that the national legislature may establish the liability of a collective entity to a much greater extent.

#### 4. Polish perspective

The Polish legislature implemented it on the basis of the Act Amending the Criminal Code and Certain Other Acts of 25 March 2011<sup>41</sup> by establishing new wording for Articles 182 to 186 of the Criminal Code, and, in addition, in Article 16 of the Act on the Liability of Collective Entities for Acts Punishable by Law<sup>42</sup> expanded the list of offences constituting the basis for the liability of a collective entity.

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<sup>39</sup> Act of 29 June 2007 on International Movements of Waste (Journal of Laws No. 124, item 859).

<sup>40</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ EU L 328, of 2008, p. 28).

<sup>41</sup> Act Amending the Criminal Code and Certain Other Acts (Journal of Laws, No. 94, item 549).

<sup>42</sup> Act on the Liability of Collective Entities for Acts Punishable by Law of 28 October 2002 (Journal of Laws No. 197, item 1661, as amended.).

As an aside, it should be noted that an analysis of the functioning of the Directive has shown that it has limited application<sup>43</sup>. As an aside, it should be noted that an analysis of the functioning of the Directive has shown that it has limited application<sup>44</sup>.

In this context, it is worth citing the judgment of the Court of Justice in Case C-315/23, in which the Court of Justice found that Croatia had failed to establish that the stored stone aggregate constituted waste and had failed to take the necessary measures for almost six years to manage the waste in question in a proper and lawful manner in accordance with EU law. The Court ordered Croatia to pay a lump sum of EUR 1,000,000 and a periodic penalty payment of EUR 6,500 for each day of delay<sup>45</sup>.

When analysing international, EU and Polish regulations, it should be noted that in all these regulations, in terms of their application within a given country, the concept of ‘waste’ is of paramount importance. On the one hand, this concept is very difficult to define, and on the other hand, the definition presented in the legal regulations must be clear enough to distinguish between behaviours that constitute a prohibited act and those that are legally irrelevant. It is also important to present how the concept of ‘waste’ has evolved over the years, as this allows not only for historical interpretation, but above all for indicating the direction of interpretation of this concept in the context of a rapidly developing economy and the constant emergence of ever new types of waste.

#### 4.1. The concept of waste – a historical perspective

However, it should be noted that the most important concept is that of ‘waste’, the meaning of which has changed over time. Under the Act of 31 January 1980, waste was defined as *‘used objects and solid substances, as well as liquid substances other than sewage, generated in connection with human existence or economic activity, useless in the place or at the time of their generation, and harmful to the environment’*<sup>46</sup>. Thus, the legislature identified two elements that were decisive in defining waste, namely ‘uselessness’ and ‘harmfulness’. Used items or substances were not always waste, but only when they were useful at the place and time of their creation<sup>47</sup>. As regards the second criterion, the definition of ‘waste’ did not refer to specific ‘harmfulness’, which meant that all waste was considered harmful by virtue of being waste<sup>48</sup>. The provisions of the aforementioned Act, together with its implementing regulations<sup>49</sup>

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<sup>43</sup> K. Maćkowiak, *Ochrona środowiska poprzez prawo karne – czas na nowe przepisy*, <https://codozasady.pl/p/ochrona-srodowiska-poprzez-prawo-karne-czas-na-nowe-przepisy> (accessed: 21 September 2025).

<sup>44</sup> *Ibidem*.

<sup>45</sup> <file:///C:/Users/kalif/OneDrive/Desktop/Moje%20dane%20ze%20starego%20laptopa%2014.02.2023/Documents/artyku%C5%82y,%20publikacje%20%20od%2024.08.2019/11%20Artyku%C5%82y%20doktorat%20-%20habilitacja/11%20AA%20ksi%C4%85zki%20do%20habilitacji/odpady%20zagraniczny%20roz/wyroki%20TS%20dotycz%C4%85ce%20%C5%9Bmieci.pdf> (accessed: 24 October 2025).

<sup>46</sup> Act on Environmental Protection and Management of 31 January 1980, Journal of Laws No. 3, item 6, consolidated text: Journal of Laws of 1994 No. 49, item 196, as amended.

<sup>47</sup> W. Radecki, *Ustawa o odpadach. Komentarz*, Warszawa 2008, p. 21–22.

<sup>48</sup> D. Danecka, *“O pojęciu odpadów w rozumieniu ustawy z dnia 14 grudnia 2012 roku”*, „Ius Novum” 2016, No. 4, p. 298.

<sup>49</sup> Regulation of the Council of Ministers of 30 September 1980 on environmental protection against waste and other pollution and on maintaining cleanliness and order in towns and villages (Journal of Laws No. 24, item 91, as amended).

regulated waste management for over a decade. In 1993, in addition to the concept of ‘waste’, the Act of 3 April 1993 introduced the concept of ‘*hazardous waste*’, which was defined as ‘waste which, due to its origin, chemical or biological composition, other properties or circumstances, poses a threat to human life or health or to the natural environment’<sup>50</sup>. In addition, a list indicating 106 types of waste considered hazardous was created<sup>51</sup>. Despite these regulations, specific situations arose in which it was necessary to determine whether a given substance could be considered waste. Thus, in 1985, the question arose as to whether the overburden removed from an open-pit mine was waste, but the Supreme Administrative Court, in its judgment of 16 July 1985, III SA 324/84<sup>52</sup>, ruled that it was a different material considered unsuitable for economic use, but not waste<sup>53</sup>.

In another ruling dated 7 July 1993, the Supreme Administrative Court ruled that manure from chickens and other farm animals, if not used in agricultural production in the production cycle, is waste<sup>54</sup>.

The definition of ‘waste’ was changed in yet another Act of 27 June 1997<sup>55</sup>, which introduced a definition of waste that covered all objects and substances, as well as liquid substances, generated in the course of economic activity or human existence and unsuitable for use at the place or time of their generation. On the basis of the aforementioned provisions, the Supreme Administrative Court ruled on 30 May 2000 that ‘*a vehicle which, as a result of an accident, is no longer suitable for further use and has been withdrawn from service must be treated as waste*’<sup>56</sup>. The fact that this vehicle, after undergoing appropriate repairs and removal of damage, will be able to be re-registered and used, cannot affect its legal classification as waste prior to such repairs.

Article 3(1)(6) of the Polish Act on Waste of 14 December 2012 introduced the concept of ‘waste’, which had been transposed from the above-mentioned Directive 2080/98/EC of 19 November 2008 on waste and repealing certain Directives, where the key concept related to ‘waste’ became the term ‘*disposal*’. This mainly referred to vehicles that had been taken out of service. The Supreme Administrative Court, referring to the meaning of the term ‘*disposal*’ in its judgment of 12 March 2013 ref. no. II OSK 2132/11, indicated that ‘*disposal*’ is a necessary condition for something to be considered waste and in fact means a change in the way the item in question is used, i.e. use in a way other than that intended for the item, and the new use could have an adverse effect on the environment. Another element for recognising an item as waste was indicated by the Provincial Administrative Court in Warsaw in its judgment of 15 October 2009, ref. no. IV SA/Wa 982/09<sup>57</sup>, arguing that not only the condition of an item at the time of its import into Poland, but also the intention of its previous owner, is decisive in determining

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<sup>50</sup> Act Amending the Act on Environmental Protection and Management and the Water Law of 3 April 1993 (Journal of Laws No. 40, item 183).

<sup>51</sup> Regulation of the Minister of Environmental Protection, Natural Resources and Forestry of 3 August 1993 on establishing a list of hazardous types of waste (Journal of Laws No. 76, item 362).

<sup>52</sup> Judgment of the Supreme Administrative Court of 16 July 1985, III SA 324/84, OSPiKA 1986, vol. 7–8, item 137.

<sup>53</sup> D. Daria. *O pojęciu odpadu w rozumieniu ustawy z dnia 14 grudnia 2012 roku*, „Ius Novum” 2016, No. 4, p. 299.

<sup>54</sup> Judgment of the Supreme Administrative Court of 7 July 1993, IV SA 1713/92, ONSA 1994, No. 3, item 108.

<sup>55</sup> Act on Waste of 27 June 1997 (Journal of Laws No. 96 of 1997, item 592).

<sup>56</sup> Judgment of the Supreme Administrative Court of 30 May 2000, I SA/Ka 2268/98.

<sup>57</sup> Judgment of the Voivodeship Administrative Court in Warsaw of 15 October 2009, ref. no. IV SA/Wa 982/09.

whether it should be considered waste. Therefore, the decision on whether to dispose of them is made by the person who supplies the specific items or substances<sup>58</sup>. Thus, an item therefore becomes waste when it is “disposed of” by its current possessor, as it is the current possessor who decides whether a given substance or item can be considered useless in a given place or at a given time.

As regards Polish regulations on shipments of waste, the equivalent of the above-mentioned Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste<sup>59</sup> is the Act on the International Shipment of Waste of 29 June 2007, which implements the aforementioned Regulation<sup>60</sup>. The Act defined the institutional and organisational framework for performing tasks resulting from the provisions of the above-mentioned regulation. The entity transporting waste does not need to have a generated confirmation of the issuance of a Waste Transfer Card from the Database on Products, Packaging and Waste Management. However, a possessor of waste on Polish territory who transfers or takes over waste is obliged to keep records of waste in accordance with national regulations. These records are limited to the Waste Record Card, which documents the takeover or transfer of specific quantities and types of waste. Pursuant to Article 3(1) of the aforementioned Act, the competent authority for matters relating to the import of waste into the country, the export of waste outside the country and the transit of waste through the country is the Chief Inspector of Environmental Protection<sup>61</sup>.

It should be noted that the transport of waste without applying the control procedures specified in the aforementioned Regulation of the European Parliament and of the Council is illegal. Pursuant to Article 25 of the aforementioned Act, in the event of illegal international shipment of waste being detected or on the basis of a notification of illegal shipment received pursuant to Article 24(1) of the Regulation on shipments of waste, the Chief Inspector of Environmental Protection initiates administrative proceedings *ex officio*.

It should be noted that waste transport is controlled by the Police, but also by the Border Guard<sup>62</sup>, as well as the Customs Service, the Road Transport Inspection and voivodeship environmental protection inspectors<sup>63</sup>.

In its judgment of 18 June 2015, ref. no. II OSK 2874/13, the Supreme Administrative Court indicated that in order for a given item to be considered waste under the provisions of the Act on the International Shipment of Waste of 29 June 2007 (Journal of Laws of 2007, No. 124,

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<sup>58</sup> Judgments of the Voivodeship Administrative Court in Warsaw of 31 March 2008, ref. no. IV SA/Wa 81/08; of 15 October 2009, ref. no. IV SA/Wa 982/09; and of 31 March 2010, ref. no. IV SA/Wa 249/10.

<sup>59</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (Journal of Law UE L 190 z 12.07.2006 as amended).

<sup>60</sup> Act on the International Shipment of Waste of 29 June 2007 (Journal of Laws of 2007, No. 124, item 859, as amended).

<sup>61</sup> E. Zębek, *Międzynarodowe przemieszczanie odpadów pomiędzy krajami unii europejskiej - aspekt prawnokarny*, „Przegląd Policyjny” 2020, vol. 137, no. 1, p. 70.

<sup>62</sup> The tasks of the Border Guard in the field of waste shipment control are regulated by the provisions of the Act on the Border Guard of 12 October 1990 (Journal of Laws of 2005, No. 234, item 1997, as amended) and the Act of 6 September 2001 on Road Transport of 6 September 2001 (i.e. Journal of Laws of 2007, No. 125, item 874, as amended). One of the tasks assigned to Border Guard officers, pursuant to Article 1(2)(12) of the aforementioned Act on the Border Guard, is to prevent the transport of waste and harmful chemical substances across the State border without the authorisation required under separate regulations.

<sup>63</sup> E. Zębek, *Międzynarodowe przemieszczanie odpadów...*, *op. cit.*

item 859, as amended) and Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on the international shipments waste of 14 June 2006, the legal and factual status existing at the time of the product's introduction into Polish territory is decisive. Whether a vehicle acquires the status of waste depends on whether, at the time of crossing the border, it can be used in accordance with its original purpose, i.e. whether it can be driven on roads<sup>64</sup>. The provisions included in sales offers, contracts or registration certificates informing about the intended use of the vehicle, e.g. '*for parts*' or '*for scrapping*', are of significant importance here for the assessment of a vehicle as '*waste*'. In its judgment of 8 November 2016, ref. no. II OSK 257/15, the Supreme Administrative Court explained that if the content of the contract submitted to the authorities indicates that the seller disposed of the vehicle for parts, then circumstances such as, in particular: the extent and effects of the damage to the vehicle, the amount of its loss in value, or the cost of repairing the vehicle in relation to its value are irrelevant. The Court pointed out that the sale of a vehicle for parts is undoubtedly its '*disposal*', as this term - as a condition for considering it waste - essentially means a change in the manner of use of the item in question, i.e. use in a manner other than that intended for the item, and the new manner of use could have an adverse impact on the environment<sup>65</sup>.

This position is also confirmed by Correspondents' Guidelines No. 9 on the shipments of waste vehicles, the common understanding of all Member States on how Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste should be interpreted<sup>66</sup>. In accordance with point 2 of these Guidelines, when distinguishing between waste in the form of vehicles and used vehicles, a used vehicle becomes waste if its possessor discards it, intends to discard it, or is obliged to discard it<sup>67</sup>. In order to make this distinction, it is necessary to examine the history of a specific vehicle. However, there are certain characteristics of a used vehicle that indicate whether or not it is waste. According to these Guidelines, a used vehicle is generally classified as waste when at least one of the following criteria is met:

- a) a certificate of scrapping exists;
- b) the vehicle has been obtained through a waste collection or waste processing system;
- c) the vehicle is intended for dismantling and reuse of spare parts or for shredding/scrapping;
- d) among the vehicle's components, in addition to personal belongings, there are parts which must be removed or whose export is prohibited under European Union or national law;
- e) the vehicle has been written off/is not suitable for minor repairs/has significantly damaged essential parts (e.g. as a result of an accident) or has been cut into pieces (e.g. in half);
- f) the evidence referred to in point 11 of the Guidelines has not been provided at the request of the competent authorities or the competent authorities of another country, such as customs, the police or other competent authorities.

It should be clarified here that the Correspondents' Guidelines in question are not legally binding, but in view of the judgment of the Court of Justice of the European Union of 13

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<sup>64</sup> Judgment of the Supreme Administrative Court of 18 June 2015, ref. no. II OSK 2874/13.

<sup>65</sup> Judgment of the Supreme Administrative Court of 8 November 2016, ref. no. II OSK 257/15.

<sup>66</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (Journal of Laws UE L 190 z 12.07.2006 ze zm.).

<sup>67</sup> N. Kulbacka-Burakiewicz, *Nielegalne postępowanie z zużytym sprzętem elektrycznym i elektronicznym - zagrożeniem dla życia i zdrowia człowieka*, „Przegląd Policyjny” 2018, vol. 131, no. 3, p. 236.

December 1989 in Case C-322/88, the following should be noted: in the light of the fifth paragraph of Article 189 of the EEC Treaty, national courts are required to take into account recommendations (in this case, the above-mentioned Guidelines) in order to resolve disputes brought before them, especially when they shed light on the interpretation of national measures adopted for their implementation or when they are intended to supplement binding Community provisions<sup>68</sup>.

When referring to international and EU regulations in relation to Polish regulations, it should first be noted that they are of significant importance in interpreting the characteristics of offences described in Article 183 of the Criminal Code<sup>69</sup>. Currently, this is the basic regulation concerning the offence of improper waste management. Article 183 § 1 of the Criminal Code provides for an offence punishable by imprisonment for a term of between one and ten years, which consists of a series of activities undertaken with regard to waste or substances in such conditions or in such a manner that it may endanger human life or health or cause a deterioration in the quality of water, air or land or destruction in the plant or animal world. The same penalty applies to the import of substances harmful to the environment from abroad, as provided for in Article 183 § 2 of the Criminal Code, and to the import from abroad or export abroad of waste in violation of the regulations, as described in Article 183 § 4 of the Criminal Code.

A more severe penalty of 2 to 12 years' imprisonment is provided for importing or exporting hazardous waste from or to a foreign country without the required notification or permit, or contrary to its terms, as provided for in Article 183 § 5 of the Criminal Code. The same statutory penalty is provided for in the case of abandoning hazardous waste in a place not designated for its storage or warehousing (Article 183 § 5a of the Criminal Code). All of the above-described prohibited acts may be committed unintentionally, in which case the statutory penalty is significantly milder, ranging from one month to five years' imprisonment. In the case of an unintentional offence, the statutory penalty is a fine and restriction of liberty.

In Polish law, waste management is also regulated by other legal acts, including:

- Act on Packaging and Packaging Waste Management of 13 June 2013, with offences specified in Articles 59-61 of the Act<sup>70</sup>,
- Act on the of Entrepreneurs' Obligations in the Field of Management of Certain Types of Waste and on Product Fees and Deposit Fees, with offences specified in Articles 37a and 37b of the Act<sup>71</sup>,

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<sup>68</sup> The above is confirmed by the final judgment of the Voivodeship Administrative Court in Warsaw of 4 November 2015, ref. no. IV SA/Wa 1454/15.

<sup>69</sup> Detailed interpretation of the elements of the prohibited acts under Article 183 of the Penal Code, found—inter alia—in: M. Filipczak [in:] *Kodeks karny. Komentarz*, ed. J. Kulesza, Warszawa 2025, art. 183; M. Kulik [w:] *Kodeks karny. Komentarz aktualizowany*, ed. M. Mozgawa, Gdańsk 2026, art. 183; P. Zakrzewski [in:] *Kodeks karny. Komentarz*, ed. J. Majewski, Warszawa 2024, art. 183.

<sup>70</sup> Act on Packaging and Packaging Waste Management of 13 June 2013 (consolidated text Journal of Laws 2025, item 870).

<sup>71</sup> Act on the of Entrepreneurs' Obligations in the Field of Management of Certain Types of Waste and on Product Fees and Deposit Fees, with offences specified in Articles 37a and 37b of the Act (consolidated text: Journal of Laws of 2024, item 433, as amended).

- Act on the Recycling of End-of-Life Vehicles of 20 January 2005, with petty offences specified in Articles 44–46, Articles 48–49, Article 51, Article 52a and Article 52b of the Act<sup>72</sup>,
- Act on Waste Electrical and Electronic Equipment of 11 September 2015, with the petty offence specified in Article 134 of the Act<sup>73</sup>,
- Act on Maintaining Cleanliness and Order in Municipalities of 13 September 1996, with the offence specified in Article 10 of the Act<sup>74</sup>,
- Act on Mining Waste of 10 July 2008, with petty offences provided for in Articles 45 to 47 of the Act<sup>75</sup>,
- Act on batteries of 24 April 2009, with petty offences specified in Articles 74-95a of the Act<sup>76</sup>,
- Act of 29 November 2000: Atomic Law, with petty offences specified in Articles 127-127c of the Act<sup>77</sup>.

The above-mentioned acts contain regulations that apply to various categories of waste. The penalties for violating the provisions of these acts include financial liability in the form of fines and liability for offences where the statutory penalty is not too severe.

## **5. Conclusion**

The analysis of waste management regulations aimed to determine whether the conceptual framework adopted in international and EU law is applicable to interpreting the elements of prohibited acts- primarily found in the Penal Code- that target the proper management of waste. An analysis of international and EU legal provisions regarding fundamental waste management concepts leads to the conclusion that it is not only possible but indeed necessary to interpret the concepts contained in those instruments in the same way as the identically named concepts constituting elements of prohibited acts in the Polish Penal Code. This has also been confirmed by the judicial case law presented.

Conceptual consistency between international and EU law and domestic criminal law facilitates the correct interpretation of the elements of prohibited acts in the Polish Penal Code concerning waste management.

The analysis also leads to the conclusion that from a legal standpoint non-penal and penal provisions regarding liability for prohibited acts form a reasonably coherent legal system, enabling the restriction of activities involving improper waste handling.

In the event of discrepancies between specific regulations priority should be given - when interpreting specific concepts constituting elements of a prohibited act- to international

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<sup>72</sup> with petty offences specified in Articles 44–46, Articles 48–49, Article 51, Article 52a and Article 52b of the Act.

<sup>73</sup> Act on Waste Electrical and Electronic Equipment of 11 September 2015 (consolidated text: Journal of Laws of 2024, item 573).

<sup>74</sup> Act on Maintaining Cleanliness and Order in Municipalities of 13 September 1996 (consolidated text: Journal of Laws of 2025, item 733).

<sup>75</sup> Act on Mining Waste of 10 July 2008 (consolidated text: Journal of Laws of 2022, item 2336).

<sup>76</sup> Act on Batteries of 24 April 2009 (consolidated text: Journal of Laws of 2025, item 809).

<sup>77</sup> Act of 29 November 2000: Atomic Law (consolidated text: Journal of Laws of 2024, item 1277, as amended).

and EU instruments as they also ensure broader protection for waste management, which is an issue of an international nature.

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